

General Information Letter: Nonresident professor employed by Illinois college who conducts all teaching over the internet and is not present in Illinois does not receive compensation "paid in this State" subject to withholding.

March 14, 2000

Dear:

This is in response to your telephone inquiry of March 13, 2000, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your inquiry you stated that xxxxxxxxxxxxxxxxxxxxxxxxxxxx currently employs xxxxxxxxxxxxxxxx as a full-time instructor for a "virtual" course. xxxxxxxxxxxx resides in the State of Virginia and performs all of his duties via the internet. He is not physically present in Illinois at any time in the performance of his teaching duties. You have inquired whether xxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxx is required to withhold Illinois income tax from the compensation it pays xxxxxxxxxxxx.

Response

Section 302(a) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 et seq.) provides that:

All items of compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual who is a nonresident at the time of such payment and all items of deduction directly allocable thereto, shall be allocated to this State.

Similarly, Section 701(a) of the IITA provides:

Every employer maintaining an office or transacting business within this State and required under the provisions of the Internal Revenue Code to withhold a tax on:

(1) compensation paid in this State (as determined under Section 304 (a) (2) (B)) to an individual . . .

Section 304(a)(2)(B) of the IITA provides:

Compensation is paid in this State if:

(i) The individual's service is performed entirely within this State;

(ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or

(iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within

March 14, 2000

Page 2

this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

Pursuant these provisions, xxxxxxxxxxx compensation from xxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxx would not be subject to Illinois income taxation or to withholding because none of his services are actually performed within Illinois.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Paul S. Caselton
Deputy Chief Counsel -- Income Tax